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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

DEBORAH VAUGHN, et al., Plaintiffs and Appellants, v. ALAMIN, INC., et al., Defendants and Respondents.	B221458 (Los Angeles County Super. Ct. No. BC407226)

APPEAL from a judgment of the Superior Court of Los Angeles County, William F. Fahey, Judge. Affirmed.

Law Office of Lorraine Anderson, Lorraine Anderson and Mark Posner for Plaintiffs and Appellants Deborah Vaughn and Cedric Vaughn.

Garrett & Tully, Ryan C. Squire and Anna Didak for Defendants and Respondents D.A.B.R., Inc. and Bryan McCann.

Plaintiffs Deborah Vaughn and Cedric Vaughn appeal from an order sustaining a demurrer by defendants Bryan McCann and D.A.B.R., Inc. without leave to amend. We affirm.

INTRODUCTION

Two children of deceased parents claim that they were defrauded out of their parents' home. They allege that defendants conspired to steal the property by forming a Nevada corporation that had the same name as the family corporation that held title to their parents' home, and then directing the new corporation to transfer the property to defendants. The issue in this appeal is whether the children, who do not have title to the property, have standing to maintain this action. We conclude that they do not.

FACTUAL AND PROCEDURAL BACKGROUND[1]

1. The Vaughns, Their Corporation, and the Property

Plaintiffs and appellants Deborah and Cedric Vaughn are the surviving children of Millicent and George Vaughn. Millicent died in March 1998. George died in March 2004. In 1986, George and Deborah formed a Nevada corporation, Alamin, Inc., which plaintiffs call "Alamin One," "old Alamin," "Alamin 1986," or "Alamin 86." We will refer to this corporation as Alamin One. Plaintiffs acknowledge that at some point in time, Alamin One became "dormant" and eventually was "suspended."

The real property at issue in this action, 4225 Enoro Drive, in the City of Los Angeles, appears to have been the Vaughn family home where Millicent and George lived for much of their lives. At various times, different Vaughn family members and Alamin One held title to the Enoro Drive property. Deeds attached to the pleadings and

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[1] Our description of the factual and procedural background includes information from plaintiffs' original and second amended verified complaints, and documents of which the trial court properly took judicial notice. There was no first amended complaint.

requests for judicial notice reflect several transfers in the 1970's, 1980's, and 1990's among Millicent, George, Deborah, Cedric, and Alamin One.

2. The 2008 Transfer of the Property

On October 15, 2008 defendant Charles Harris, as agent for defendant Melanne S. Andrus, filed with the Secretary of State of the State of Nevada articles of incorporation for a corporation named Alamin, Inc.[2] We will refer to this corporation as Alamin Two. Harris was the registered agent for Alamin Two, and Andrus was the incorporator. The articles of incorporation stated that the purpose of the corporation was "real estate acquisition."

On December 5, 2008 "Alamin, Inc., a Nevada Corporation" (i.e., Alamin Two) granted to defendants Bryan McCann and D.A.B.R., Inc., a California corporation, the Enoro Drive property. Andrus executed the grant deed, and defendant Tomeka Tucker notarized Andrus's signature.

Plaintiffs claim that they had nothing to do with the incorporation of Alamin Two or the transfer of the Enoro Drive property to McCann and D.A.B.R., and that the December 5, 2008 deed is a forgery. Plaintiffs contend that as a result of this transfer, "[w]hether by forged deed, or through other means or method," the Enoro Drive property "was mysteriously occupied and purportedly deeded to others after their father's death [and] was divested from family control."

How McCann and D.A.B.R. obtained title to the Enoro Drive property is, as plaintiffs claim, a bit of a mystery. Indeed, there is something very suspicious about the appearance of a corporation that coincidentally had the same name as the corporation the Vaughns formed over 20 years ago to hold title to the same property, and the sale of the property to McCann and D.A.B.R. less than two months after the new corporation came into existence.[3] The issue in this appeal, however, is whether plaintiffs have standing to solve this mystery by maintaining this action.

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[2] This document is attached to the verified answer filed by defendant Harris.

[3] There is also something very suspicious about the Vaughn family transfers of the

3. Plaintiffs' Original Complaint

Plaintiffs' original complaint, which Deborah verified, alleged that Andrus and Harris formed Alamin Two "for the express purpose of claiming a right to ownership of the" Enoro Drive property, and asserted causes of action for quiet title, ejectment, and fraud against McCann, D.A.B.R., Andrus, and Harris. Plaintiffs alleged that the December 2008 deed from Alamin Two to McCann and D.A.B.R. was a forgery, and that the persons in possession of the property recorded the deed "to thwart any efforts to have the occupants removed by the police, who now consider this a civil matter." Plaintiffs alleged that the occupants of the Enoro Drive property claim to own the property, alternatively, because of the December 2008 deed, because they were tenants in common with George, and because they were George's caregivers.

Plaintiffs also alleged that they "were the heirs at law to George L. Vaughn, and owners of the subject property." Plaintiffs alleged that their "title is based on Vaughn's [sic] receipt and recording of a warranty deed from one of the prior owners, their mother, and being heirs at law to the other owner, their father." Plaintiffs attached to their original complaint a warranty deed dated March 13, 1998,[4] signed by Millicent and notarized on March 13, 1998, which transferred the Enoro Drive property from Millicent to Alamin One "to have and to hold only as Trustee for the use and benefit of George L. Vaughn who is expressly given the power to order the Trustee [i.e., Alamin One] to sell the herein described real property with free and unfettered use of the proceeds of

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property to each other and to a corporation to hold the property in trust for the family, particularly when, as noted below, the circumstantial judicially noticeable facts available suggest that there were creditors on the horizon.

[4] "Warranty deeds are used infrequently in California because of the common use of title insurance. In addition to the covenants that are implied in a grant deed, a warranty deed expressly warrants the title to the property and the quiet possession of the property to the grantee. The grantor thereby agrees to defend the premises against any unlawful claim to the title or possession of the property conveyed by any third person." (3 Miller & Starr, *California Real Estate*, § 8:11, at p. 23 (3d ed. 2000).)

sale . . . ."[5] Millicent also covenanted that she was "lawfully seized in fee simple" of the property. Plaintiffs did not record the March 13, 1998 deed until June 21, 2006, over eight years after Millicent had signed the deed and had her signature notarized.

4. The Demurrer by McCann and D.A.B.R. to the Original Complaint

It turned out that despite the notary public's statement that Millicent had "personally appeared" before her and "produced ID" on March 13, 1998, Millicent had died on March 4, 1998. McCann and D.A.B.R. asked the trial court to take judicial notice of Millicent's death certificate, and demurred to the complaint on the ground that plaintiffs did not have an interest in the property and therefore could not maintain this action. In their untimely opposition plaintiffs did not oppose the demurrer but asked only for leave to amend because admittedly there were "obvious problems with the pleadings." Counsel for plaintiffs stated that she was "still obtaining evidence from the clients and will try to amend the complaint as soon as possible," and asked "for a little time for additional investigation."

At the hearing on the demurrer, the trial court found it "a little unusual" that plaintiffs were relying on "a deed purportedly signed by their mother who passed away days earlier," and noted that section 128.7 of the Code of Civil Procedure required counsel "to have a substantial factual basis and good faith before [commencing] a proceeding." The trial court stated that it was troubled that counsel for plaintiffs had filed a verified complaint based on a deed executed by a dead person and still needed "time for additional investigation." The trial court sustained the demurrer with 15 days leave to amend.

5. *Plaintiffs' Amended Complaint*

Plaintiffs alleged in their amended complaint, again verified by Deborah, that they were now "the heirs of George L. Vaughn and Millicent Vaughn, their parents, and

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[5] The March 13, 1998 deed also provided that if George did not exercise these powers, then Millicent was transferring the property to Alamin to hold as trustee for the use and benefit of Cedric and Deborah as tenants in common.

owners of the subject property." Plaintiffs alleged that "there are no other heirs at law," their "parents had stated their intention to leave the real property to their children," and George's "last will, dated November 15, 1962, not revised after the death of his wife, gave his entire estate to his wife." Plaintiffs also now alleged that their "title is based on the last legal transfer of the real property from George to Millicent Vaughn, as her sole and separate property on November 18, 1977, as instrument number 77-1282466, and being the heirs at law to the last owner, their mother, who did not leave a will, unless it was in the house when squatters came into same, and purportedly cleaned, throwing out personal records" of their parents after George died.[6] Plaintiffs again alleged that Alamin One, which was "incorporated by, owned, and operated by" George and Deborah, became "dormant, and eventually suspended" after George died. Plaintiffs did not provide any explanation for their prior reliance on the March 13, 1998 deed, their change in ownership allegations, or how their mother had signed a deed after she had died. Plaintiffs' amended complaint asserted causes of action for quiet title, ejectment, fraud, "notarial misconduct" against Tucker, slander of title, and cancellation of instruments.[7]

6. The Demurrer by McCann and D.A.B.R. to the Amended Complaint

It turned out that the November 18, 1997 deed had been set aside and voided by a 1984 court judgment. McCann and D.A.B.R. asked the trial court to take judicial notice of the March 16, 1984 judgment in *Andrew M. Stein and Ruth Stein v. George L. Vaughn, Jr., Millicent Vaughn, et al.,* Los Angeles Superior Court Case No. C404-184, which "set aside, annulled and declared void" the conveyance of the Enoro Drive property from George to Millicent in order to satisfy a judgment the Steins had previously obtained against George. McCann and D.A.B.R. argued in their demurrer to the amended

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[6] Plaintiffs did not attach a copy of the recorded November 18, 1977 quitclaim deed to their amended complaint. McCann and D.A.B.R. provided the deed, instrument number 77-1282466, to the trial court attached to their request for judicial notice.

[7] Plaintiffs added Lawyers Title Company as a named defendant in the quiet title, slander of title, and cancellation of instruments causes of action, and as a doe defendant. It is unclear from the record whether plaintiffs ever served Lawyers Title.

complaint that the amended complaint was a sham pleading and that plaintiffs still lacked standing because they did not have title to the property.

McCann and D.A.B.R. also asked the trial court to take judicial notice of a warranty deed that Cedric and Deborah had executed on March 13, 1998, conveying the Enoro Drive property from them to George, but had not recorded until January 2, 2009, five years after George had died. McCann and D.A.B.R. argued that by recording this deed approximately one month before plaintiffs filed this action on February 6, 2009, plaintiffs gave up any title to or interest in the property, and did not have standing to bring this action at the time they filed it.[8]

In response to the demurrer, plaintiffs changed theories again. Plaintiffs now argued in opposition to the demurrer that neither Millicent, nor George, nor plaintiffs, owned the property. Instead, plaintiffs argued that in 1986 George transferred the property to Alamin One, and that Alamin One had been since 1986 and "continues to be" the "legal record title owner of the property." Plaintiffs further argued that "there is no record of any transfers of the Subject Property by Alamin [One] after George Vaughn conveyed it to Alamin [One] after its incorporation," although at the same time they maintained that "[f]rom January of 1962 through 2004, several conveyances of the Property took place between and among the individual members of the Vaughn Family and, Alamin [One] (collectively referred to as the 'Vaughn Transfers') . . . ."

On the issue of defendants' liability, plaintiffs argued in opposition to the demurrer that in or about early 2008 "defendants discovered that the Subject Property had tax liens, and other indications that it might have been abandoned, or simply forgotten by its owners." Plaintiffs claimed that Andrus and Harris formed a new corporation, named it Alamin, Inc., and then sold the property to McCann and D.A.B.R., who are either living there or allowing others to live there. Plaintiffs argued that they had alleged "that

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[8] By recording the March 1998 deed in January 2009, plaintiffs may have been attempting to transfer the Enoro Drive property to themselves through intestate succession from their long-dead father.

they are the sole heirs of the last legal owner of the Subject Property." Conceding that "plaintiffs might have been better served by having themselves formally appointed as the representatives of their parents' respective estates before filing suit," plaintiffs explained that "given the circumstances, Plaintiffs felt that time was of the essence due to their discovery that strangers were illegally residing in the Subject Property," and asked for leave to amend to "properly assert their standing as the heirs to, and representatives of the estate of the last legal owner of the Subject Property." Plaintiffs did not provide any explanation for their prior reliance on the March 13, 1998 and November 18, 1977 deeds, their change in ownership allegations, why they had previously alleged that their mother had signed the March 13, 1998 deed after she had died, or why they had relied on a deed that had been set aside, annulled, and declared void.

At the hearing on the demurrer to the amended complaint, plaintiffs argued that they had standing not based on the March 13, 1998 deed, not based on the November 18, 1977 deed, not based on the continuous ownership by Alamin One since 1986 of the property, and indeed not based on any deed or other recorded instrument, but now based on plaintiffs' status as the intestate heirs of George and Millicent by way of intestate succession. The trial court took the matter under submission.

7. The Trial Court's Ruling

On November 30, 2009 the trial court granted the requests by McCann and D.A.B.R. for judicial notice and sustained the demurrer without leave to amend.[9] The trial court stated that the documents subject to judicial notice "show[ed] that plaintiffs

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[9] McCann and D.A.B.R. asked the court to take judicial notice of the November 1977 recorded deed from George to Millicent, the March 1984 court judgment in *Stein, et al. v. George L. Vaughn, Jr., et al.* voiding the November 1977 deed, the March 1998 recorded deed from plaintiffs to George, the March 1998 recorded deed from Millicent to Alamin, and the death certificates for Millicent and George. Plaintiffs did not oppose the requests. We take judicial notice of these documents as well. (See Evid. Code §§ 452, subd. (c), 459, subd. (a); *Lockhart v. MVM, Inc.* (2009) 175 Cal.App.4th 1452, 1460-1461 [court may take judicial notice of recorded deeds under subdivisions (c) and (g) of Evidence Code section 452]; *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 549 ["court may take judicial notice of recorded deeds"].)

have no standing to bring this action, having conveyed whatever title they possessed to a third party [i.e., George, deceased] as of January 2, 2009. Further, plaintiffs' Verified Second Amended Complaint improperly contradicts the allegations in the Verified Complaint. Plaintiffs' pleadings appear to be a sham filed in violation of [Code of Civil Procedure section] 128.7. It would not be possible for plaintiffs to provide a further Verified Complaint as to these defendants which would state a viable cause of action." The trial court also dismissed Alamin Two, Tucker, and Andrus without prejudice "for failure to serve these defendants for 10 months."[10]

The trial court entered judgment on December 17, 2009. McCann and D.A.B.R., Inc. gave notice of entry of judgment on December 30, 2009. Plaintiffs filed a timely notice of appeal on December 31, 2009.

DISCUSSION

1. Standard of Review

In reviewing the sufficiency of a complaint against a general demurrer, we assume the truth of all facts properly pleaded and review the complaint de novo to determine whether it states facts sufficient to state a cause of action. (*Breneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 180.) We accept as true the properly pleaded material factual allegations, together with facts that may be properly judicially noticed. Reversible error exists if the plaintiff alleged facts showing entitlement to relief under any possible legal theory. (*Platt v. Coldwell Banker Residential Real Estate Services* (1990) 217 Cal.App.3d 1439, 1444.) When a demurrer is sustained without leave to amend, we must also decide whether there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) If the complaint can be cured by amendment, then the trial court abused its discretion in sustaining the

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[10] It is unclear from the record whether plaintiffs' claims against Harris, who answered the complaint, were ever resolved. The trial court sustained Lawyers Title's demurrer to the second amended complaint without leave to amend. Harris and Lawyers Title are not parties to this appeal.

demurrer without leave to amend. (*Ibid.*) If not, then the trial court did not abuse its discretion and we affirm. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) The burden is on the plaintiff to show how the complaint can be amended to state a cause of action. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1386.) Our review is de novo. (*Zelig,* at p. 1126.)

A demurrer challenges defects on the face of the complaint and can only refer to matters outside the pleading that are judicially noticeable. (*Blank v. Kirwan, supra,* 39 Cal.3d at p. 318, *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) We must take judicial notice of matters properly judicially noticed in the trial court and may take judicial notice of any matter specified in Evidence Code section 452. (Evid.Code, § 459, subd. (a).)[11]

2. Plaintiffs Do Not Have Standing To Maintain Their Causes of Action for Quiet Title, Ejectment, and Slander of Title

Plaintiffs have relied at various times on at least four different documents and theories as their basis for standing to assert their claims against defendants: (1) the March 13, 1998 deed transferring the property from Millicent to Alamin One; (2) the November 18, 1977 deed transferring the property from George to Millicent; (3) the 1986 transfer of the property (no deed submitted) from George to Alamin One, which has continuously owned the property since then; and (4) George and Millicent never transferred the property by deed and died intestate, and plaintiffs inherited the property from their parents through intestate succession. On appeal, plaintiffs choose to rely on theory (3): "In 1986, George Vaughn formed Alamin One to which he thereafter

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[11] The requests by McCann and D.A.B.R. for judicial notice of business information printouts from the Nevada Secretary of State's website for Alamin One and D.A.B.R. are denied. The requests by McCann and D.A.B.R. for judicial notice of several Nevada state statutes and a published decision by the Nevada Supreme Court are granted. (Evid. Code § 452, subd. (a).) The supplemental request by McCann and D.A.B.R. for judicial notice of the December 30, 2008 Los Angeles County Tax Collector's Certificate of Redemption for the Enoro Drive property is granted. (See *El Escorial Owners' Assn. v. DLC Plastering, Inc.* (2007) 154 Cal.App.4th 1337, 1350.)

transferred the Subject Property. Since that time, Alamin One has been, and continues to be, the legal record title owner of the Subject Property. There have not been any legal transfers of the Subject Property since its initial conveyance to Alamin One in 1986." Plaintiffs argue that they have standing to sue because "Alamin One was owned by the Vaughn Parents [George and Millicent], and accordingly, the assets of Alamin One, including the Subject Property, are part of the estate [sic] of the Vaughn Parents. Therefore . . . the Vaughn Children [Deborah and Cedric] are proper plaintiffs in this action as the sole legal heirs of the estates of the Vaughn Parents."

The problem with plaintiffs' (latest) argument is that if they inherited anything from their parents by intestate succession,[12] they inherited shares or ownership interests in Alamin One, not the assets of Alamin One, such as the Enoro Drive property. "Shareholders own neither the property nor the earnings of the corporation. Shareholders only own stock, from which their income is derived upon the liquidation of assets or the declaration of dividends by the directors." (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 126, citing *Miller v. McColgan* (1941) 17 Cal.2d 432, 436; accord, *Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 212, 229; see *Merco Construction Engineers, Inc. v. Municipal Court* (1978) 21 Cal.3d 724, 729-30 ["A corporation . . . in its corporate . . . rights and liabilities . . . is as distinct from the persons composing it, as an incorporated city is from an inhabitant of that city."].) The same rule applies in Nevada, where George and Deborah incorporated Alamin One. (See *Page v. Walser* (Nev. 1923) 46 Nev. 390, 213 P. 107, 112 ["It is the general rule that real or personal property and choses in action, conveyed to or acquired by a corporation, are in law the property of the corporation as a distinct legal entity, and not in any sense the property of

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[12] Plaintiffs alleged in their amended complaint that George died with a will that gave his entire estate to his wife. Because Millicent, the only devisee, had predeceased George, George is deemed to have died intestate, and plaintiffs would inherit from George by intestate succession. (See *In re Friedman's Estate* (1961) 198 Cal.App.2d 434, 437; *In re Dunn's Estate* (1953) 120 Cal.App.2d 294, 295.)

its members or stockholders."].) Similarly, what became "part of the estates of the Vaughn parents" were shares or ownership interests in Alamin One, not ownership interests in the property. Therefore, only Alamin One, and not plaintiffs, has standing to sue for the alleged loss of the property. (See *Vinci v. Waste Management, Inc.* (1995) 36 Cal.App.4th 1811, 1815 ["The remedy lies with the corporation, not the shareholder, even if the injured shareholder is the sole shareholder."].) Thus, under plaintiffs' current theory, they lack standing because, according to them, Alamin One owns the Enoro Drive property, and they do not.[13]

This rule is more than a mere technicality, particularly where, as here, "to allow a shareholder to sue on his own behalf would run the risk of double recovery—once to the shareholder and once to the corporation." (*Vinci v. Waste Management, Inc.*, *supra*, 36 Cal.App.4th at p. 1815.) Although plaintiffs represented to the trial court that the property "had tax liens" that needed to be resolved, and the corporation might have to pay some fees and penalties in Nevada, Alamin One can still revive its charter. (See *Redl v. Secretary of State* (Nev. 2004) 120 Nev. 75, 85 P.3d 797, 799-800 [no time restriction on reviving, as opposed to reinstating, a Nevada corporation].)[14] If, as plaintiffs contend, Alamin One owns the property, and if plaintiffs were allowed to proceed with this lawsuit, then defendants could face another lawsuit from the corporation over the same property. (See *Vinci*, at p. 1815; *Stein v. United Artists Corp.* (9th Cir. 1982) 691 F.2d 885, 896-97 ["If shareholders were permitted to recover their losses directly, there would be the possibility of a double recovery, once by the shareholder and again by the corporation."].)

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[13] Plaintiffs did not bring this action as a derivative action, nor did they allege that they made any kind of demand on Alamin One to pursue this action.

[14] To revive Alamin One, plaintiffs would need to apply for revival with the Nevada Secretary of State, pay all fees and penalties, file a list of officers and directors, designate a resident agent, file a certificate setting forth the effective date and duration of the revival, and have the certificate signed by shareholders representing a majority of the corporation's shares. (Nev. Rev. Stats. §§ 78.180, 78.730; *Redl*, *supra*, 85 P.3d at 799.)

Because plaintiffs have alleged that they do not have title to or an ownership interest in the property, they cannot maintain their causes of action for quiet title, ejectment, and slander of title. (See *Reed v. Hayward* (1943) 23 Cal.2d 336, 340 ["plaintiff in a quiet title action must have title at the time of the commencement of the action"]; *Monolith Portland Cement Co. v. Gillebergh* (1954) 129 Cal.App.2d 413, 419 ["In California, the law generally requires legal title for an ejectment action."]; *West Inv. Co. v. Moorhead* (1953) 120 Cal.App.2d 837, 842 [in order to recover for slander of title, plaintiff must establish clear title], disapproved on other grounds, *Albertson v. Raboff* (1956) 46 Cal.2d 375, 380.)

Plaintiffs argued in the trial court: "Before even addressing the issue of Plaintiffs' standing to sue, Defendants must establish their standing to defend against the complaint. Defendants have failed to do so." Plaintiffs, however, had it backwards. The issue of plaintiffs' standing to sue comes before defendants' defense of their title. (See *Iglesia Evangelica Latina, Inc. v. Southern Pacific Latin America District of the Assemblies of God* (2009) 173 Cal.App.4th 420, 445 ["Standing is a threshold issue, because without it no justiciable controversy exists."]; *Martin v. Bridgeport Community Assn., Inc.* (2009) 173 Cal.App.4th 1024, 1031 ["[s]tanding is the threshold element required to state a cause of action"].) Plaintiffs have not and cannot meet this threshold requirement in this case.

3. Plaintiffs Do Not Have Standing To Maintain, and Cannot State, a Claim for Cancellation of Instruments

Plaintiffs' cause of action for cancellation of instruments seeks "a declaration that ALL documents purportedly recorded subsequent to the 1977 deed to Millicent Vaughn, with respect to these subject premises, be declared void."[15] Plaintiffs did not specifically allege which instruments they seek to cancel, or whether their cancellation cause of action seeks to void the deed that they themselves signed in 1998 transferring the Enoro Drive property to their father, or the 1986 deed, if there is one, transferring the property

[15] Of course, the 1977 deed has already been declared void.

from George to Alamin One, on which they now base their claim that they have standing to bring this action.

Cancellation is an action under Civil Code section 3412 to cancel a written instrument that clouds a title. (See *Wolfe v. Lipsy* (1985) 163 Cal.App.3d 633, 638, disapproved on other grounds, *Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 35-36.)[16] It is similar to an action to quiet title, but "narrower in scope" because it is "directed at a particular instrument or piece of evidence constituting the cloud and seeks its cancellation." (5 Witkin, *California Procedure*, Pleading, § 655(6), at p. 83 (5th 2008).) An action for cancellation or to remove a cloud on title historically "is aimed at a particular instrument, or piece of evidence, which is dangerous to the plaintiff's rights, and which may be ordered to be destroyed in whosesover hands it may happen to be," whereas quiet title is an action "for the purpose of stopping the mouth of a person who has asserted or is asserting a claim to the plaintiff's property, whether such a claim be founded upon evidence or utterly baseless." (*Castro v. Barry* (1889) 79 Cal. 443, 446.) Quiet title actions are now brought under Code of Civil Procedure section 760.020 "to establish title against adverse claims to real or personal property or any interest therein."

There are at least two defects in plaintiffs' cause of action for cancellation of instruments. First, like a cause of action for quiet title, a plaintiff "without any title or interest in the property cannot maintain" a cause of action for cancellation. (*Osborne v. Abels* (1939) 30 Cal.App.2d 729, 731; see 12 Miller & Starr, *California Real Estate*, § 34:112, at p. 34-382 (3d ed. 2008) ["A person who does not have an interest in a parcel of real property cannot bring an action to cancel a deed or mortgage regarding the property."].) "As a general rule a party to the contract or a privy thereto, and he alone, is entitled to maintain a suit to cancel or rescind it, and one who is a stranger to, or has no interest in, the subject matter of the suit is not ordinarily entitled to such relief . . . ."

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[16] Civil Code section 3412 provides: "A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or cancelled."

(*Reina v. Erassarret* (1949) 90 Cal.App.2d 418, 423-24.) Here, plaintiffs do not have title to the property, and they do not have an interest in the property. They allegedly have an interest in Alamin One, and Alamin One allegedly has title to and an interest in the property, but plaintiffs allege that they have neither.

Second, unlike a cause of action for quiet title, the plaintiff in a cause of action for cancellation must specifically plead the particular instrument that the plaintiff asserts constitutes a cloud on the plaintiff's title and "must state facts, not mere conclusions, showing the apparent validity of the instrument designated, and point out the reason for asserting that it is actually invalid." (*Ephriam v. Metropolitan Trust Co. of California* (1946) 28 Cal.2d 824, 833-34; accord *Kroeker v. Hurlbert* (1940) 38 Cal.App.2d 261, 265; see *Wolfe v. Lipsy*, *supra*, 163 Cal.App.3d at p. 638 ["To state a cause of action to remove a cloud, instead of pleading in general terms that the defendant claims an adverse interest, the plaintiff must allege, inter alia, facts showing actual invalidity of the apparently valid instrument or piece of evidence."]; Greenwald et al., Cal. Practice Guide: Real Property Transactions (The Rutter Group 2009) ¶ 11:548, p. 11-110 (rev. #1, 2008).) ["An action for cancellation cannot be pleaded generally."].) Here, plaintiffs did not allege their cause of action for cancellation specifically, either as to instrument or invalidity. To the contrary, plaintiffs alleged that they seek cancellation of "ALL documents purportedly recorded subsequent to the 1977 deed to Millicent Vaughn, with respect to these subject premises . . . ." Although we can reasonably infer that this group of documents includes the December 2008 deed from Alamin Two to McCann and D.A.B.R., it also could include the 1986 deed from George to Alamin One (if there is one) on which plaintiffs base their entire lawsuit, the 1998 deed from Millicent to Alamin One, and the 1998 deed from plaintiffs to George.

In any event, plaintiffs now rely exclusively on the 1986 transfer of the property from George to Alamin One, not the 1977 deed from George to Millicent. Thus, the allegations and relief requested by plaintiffs in their cause of action for cancellation of instruments are directly contrary to the position plaintiffs have taken to try to save their other causes of action. Plaintiffs are not entitled to plead such inconsistencies in multiple

pleadings and to make inconsistent arguments on appeal. (See *Grotenhuis v. County of Santa Barbara* (2010) 182 Cal.App.4th 1158, 1164 [plaintiff "should not be able to weave in and out of corporate status when it suits the business objective of the day"].)

4. Plaintiffs Cannot State a Claim for Fraud

Plaintiffs allege that the December 2008 deed by which McCann and D.A.B.R. obtained title to the property "was drafted, signed and acknowledged as a fraud upon the true owners of the premises," that McCann and D.A.B.R. had a "duty to the general public, and specifically to plaintiffs to refrain from" forging deeds, and that plaintiffs "justifiably rely on the public records as recorded with the county recorder," which is "required and instrumental in California's system of real property record keeping."

There are at least two defects in plaintiffs' third cause of action for fraud. Because plaintiffs concede that Alamin One is the "true owner," plaintiffs did not suffer any damages. (See *Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1016-17 ["damage is an essential element" of a cause of action for fraud, and a misrepresentation, "even maliciously committed, does not support a cause of action unless the plaintiff suffered consequential damages"]; *Shopoff & Cavallo LLP v. Hyon* (2008) 167 Cal.App.4th 1489, 1509 ["'Allegations of damages without allegations of fact to support them are but conclusions of law, which are not admitted by demurrer.'"]; *Zumbrum v. University of Southern California* (1972) 25 Cal.App.3d 1, 12 ["In fraud, the pleading must show a cause and effect relationship between the fraud and damages sought; otherwise no cause of action is stated."].) Plaintiffs do not allege that they were defrauded out of their ownership interests in Alamin One. To the contrary, they allege a classic claim for loss of a corporate asset, a claim that belongs to Alamin One, not to plaintiffs. (See *Gagnon Co., Inc. v. Nevada Desert Inn* (1955) 45 Cal.2d 448, 453; *San Diego Gas Co. v. Frame* (1902) 137 Cal. 441, 447 ["The law confers upon the corporation the right to sue," and the "stockholders individually cannot sue . . . in respect to their interests in the property held in the name of the corporation"]; *Desaigoudar v. Meyercord* (2003) 108 Cal.App.4th 173, 183 ["Because a corporation is a legal entity separate from its shareholders, when a corporation has suffered an injury to its property the corporation is the party that

possesses the right to sue for redress"].) Moreover, plaintiffs did not, despite two opportunities, come close to alleging their fraud claim with sufficient specificity, particularly against D.A.B.R, a corporation. (See *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 993; *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.)

5. The Trial Court Did Not Abuse Its Discretion in Denying Leave To Amend

We agree with the trial court that the doctrine of sham pleading precludes plaintiffs from attempting to plead a fifth theory of how they have standing to maintain this action. "Under the sham pleading doctrine, plaintiffs are precluded from amending complaints to omit harmful allegations, without explanation, from previous complaints to avoid attacks raised in demurrers or motions for summary judgment." (*Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 425.) The "trial court has discretion to deny leave to amend when the proposed amendment omits or contradicts harmful facts pleaded in a prior pleading unless a showing is made of mistake or other sufficient excuse for changing the facts. Absent such a showing, the proposed pleading may be treated as a sham." (*Sanai v. Saltz* (2009) 170 Cal.App.4th 746, 768; see *Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 653 [the plaintiff "may not discard factual allegations of a prior complaint, or avoid them by contradictory averments, in a superseding, amended pleading," and "must explain inconsistencies between the prior and proposed pleading"].)

Plaintiffs originally based their claim to ownership of the property on a 1998 deed from Millicent to George, which plaintiffs do not dispute shows that Millicent signed it after her death. Plaintiffs next based their ownership claim on a 1977 deed, which plaintiffs do not dispute is void. Plaintiffs also do not dispute that they recorded in January 2009 a deed they signed in March 1998 transferring title to the property from them to their deceased (at the time of recording) father. We cannot conceive how plaintiffs could amend again and explain all of these inconsistencies. Although plaintiffs requested leave to amend in their opposition to the demurrer to the amended complaint, they have never specified, in the trial court or on appeal, how they would cure the defects in their amended complaint, or how they could allege facts sufficient to give them

standing to bring this action. A request for leave to amend must be accompanied by a showing in what manner the plaintiff can amend the complaint, and "how that amendment will change the legal effect" of the complaint. (*Performance Plastering v. Richmond American Homes of California, Inc.* (2007) 153 Cal.App.4th 659, 669; see *Galbiso v. Orosi Public Utility Dist.* (2010) 182 Cal.App.4th 652, 674 ['"While such a showing can be made for the first time to the reviewing court [citation], it must be made."'].) Plaintiffs have never made such a showing.

More important, plaintiffs have never offered any kind of explanation, mistake, or excuse for their inconsistent allegations that could possibly preclude the sham pleading doctrine from applying. (See *Vallejo Development Co. v. Beck Development Co.* (1994) 24 Cal.App.4th 929, 946 ["any inconsistencies with prior pleadings must be explained"].) Plaintiffs have never stated how they can explain or excuse the contradictory allegations they made in their first two verified complaints. Deborah has been involved with the Enoro Drive property and its various transfers for decades, and presumably could have provided an explanation if she had one, but neither she nor her brother has ever done so. The trial court did not abuse its discretion in denying plaintiffs leave to amend.

6. The Trial Court Did Not Abuse Its Discretion in Dismissing the Remaining Defendants

Finally, plaintiffs argue that the trial court abused its discretion by dismissing defendants Tucker, Andrus, and Alamin Two without prejudice for plaintiffs' failure to serve them, after the trial court had issued at least five orders to show cause and had admonished counsel for plaintiffs "time and again to effect service" on these defendants. It is true that the trial court initially should have imposed less severe sanctions, such as monetary sanctions, before dismissing these defendants for failure to file a proof of service. (See *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 1061-1062; *Tilche v. Van Quatham* (1998) 66 Cal.App.4th 1054, 1080-82.) Plaintiffs, however, do not have standing to maintain this action against any of the defendants. Whether plaintiffs serve the remaining defendants in a lawsuit plaintiffs have no standing to bring is irrelevant.

DISPOSITION

The judgment is affirmed. McCann and D.A.B.R. are to recover their costs on appeal.

SEGAL, J.[*]

We concur:

WOODS, Acting P. J.

ZELON, J.

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[*] Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.